

IS 296A (2)  
Legal and Policy Challenges Posed by Peer to Peer File Sharing and File Sharing  
Technologies  
Professor Samuelson  
Spring 2005  
Mondays 4-6pm, South Hall Room 202

## Syllabus

### Course Materials:

- NATIONAL RESEARCH COUNCIL, THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION AGE (2000) (required)
- Reader available from University Copy Service (2425 Channing Way) (required)
- Some readings are web only (see reader)
- Recommended readings are on the website and in table of contents for the reader

### Part I: Introduction

Jan 24 Introduction to Seminar, P2P Technologies, and Copyright

Guest speaker: Professor John Chuang, SIMS, UC Berkeley

- Nelson Minar & Marc Hedlund, Chapter 1: A Network of Peers, PEER-TO-PEER: HARNESSING THE POWER OF DISRUPTIVE TECHNOLOGIES (Andy Oram, ed. 2001), available at <http://www.oreilly.com/catalog/peertopeer/chapter/ch01.html>
- Chapter 1: The Emergence of the Digital Dilemma (especially pp. 27-60), and Chapter 2: Music: Intellectual Property's Canary in the Digital Coal Mine, NATIONAL RESEARCH COUNCIL, THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION AGE (2000)

Jan 31 Social Norms of File-Sharing

- Jessica Litman, *Sharing and Stealing*, 26 COMM/ENT L.J. (forthcoming 2004), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=472141](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=472141), pp. 1-25
- Lior Jacob Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-Swapping Networks*, 89 Va. L. Rev. 505 (2003), excerpts available at <http://cyber.law.harvard.edu/digitalmedia/strelivutz-clip.htm>

Part II Copyright Industry Efforts to Regulate Development of Infringement-Enabling Technologies

Feb 7            The *Sony Betamax* Case: Setting Liability Rules for Technologies With Substantial Non-infringing Uses

- Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984)

Feb 14           Copyright Industry Lawsuits Against Napster And Aimster: *Sony* Revisited

- A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)
- In re Aimster Litigation, 334 F.3d 643 (7th Cir. 2003)

Feb 28           *MGM v. Grokster*: The *Sony* Standard Challenged

- Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 380 F.3d 1154 (9<sup>th</sup> Cir. 2004)
- MGM Petition to the U.S. Supreme Court for a Writ of Certiorari, available [http://www.eff.org/IP/P2P/MGM\\_v\\_Grokster/20041008\\_Grokster\\_final\\_petition.pdf](http://www.eff.org/IP/P2P/MGM_v_Grokster/20041008_Grokster_final_petition.pdf)

March 7           Legislative Proposals to Change Rules for Technology Developer Liability for Copyright Infringements By Users

- Inducing Infringement of Copyright Act of 2004, S. 2560, 108<sup>th</sup> Cong., 2d Sess. (2004)
- Copyright Office Alternative Draft of S. 2560, available at <http://www.copyright.gov/docs/S2560.pdf>
- Statement of the Honorable Marybeth Peters, Register of Copyrights to the Senate Committee on the Judiciary Hearing on S. 2560, the Intentional Inducement of Copyright Infringements Act of 2004, July 22, 2004, available at <http://www.copyright.gov/docs/regstat072204.html>

### Part III: Legal Challenges to File Sharing

March 14           Obtaining User Identity Information From Internet Service Providers

- RIAA v. Verizon Internet Services, 351 F.3d 1229 (D.C. Cir. 2003)

- Katie Dean, *One File Swapper, One Lawsuit*, Wired News (March 8, 2004), available at <http://www.wired.com/news/digiwood/0,1412,62576,00.html>
- Elektra Ent. Group, Inc. v. Does 1-6 (E.D. Pa. 2004), available at [http://www.eff.org/IP/P2P/RIAA\\_v\\_ThePeople/20041012\\_Order\\_Granteeing\\_Request.pdf](http://www.eff.org/IP/P2P/RIAA_v_ThePeople/20041012_Order_Granteeing_Request.pdf)
- Nathaniel S. Good & Aaron Krekelberg, *Usability and Privacy: A Study of KaZaa Peer to Peer File-Sharing*, HP Tech Report (2004), available at <http://www.sims.berkeley.edu/~ngood/#publications>

Mar 28            RIAA v. File Sharers

- Peter Yu, *P2P and the Future of Private Copying*, Mich. St. U. Law School, Legal Studies Research Paper Series, available at <http://ssrn.com/abstract=578568>, pp. 5-17
- Fred von Lohmann, *Is Suing Your Customers a Good Idea?*, Law.com (Oct. 22, 2004), available at <http://www.law.com/jsp/article.jsp?id=1095434496352>
- Mark A. Lemley & R. Anthony Reese, *Reducing Copyright Infringement Without Restricting Innovation*, 56 Stan. L. Rev. 1345 (2004), Part III, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=525662](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=525662) (pp. 149-187)

April 4            Other Measures Aimed at Deterring File-sharing of Copyrighted Works

Guest Speaker: Postdoctoral Scholar Nicholas Christin, SIMS, UC Berkeley

- HR 4077, To enhance criminal enforcement of the copyright laws, to educate the public about application of the copyright law to the Internet, and for other purposes, 108<sup>th</sup> Cong., 2d Sess. (2004)
- Appendix E: Copyright Education, NATIONAL RESEARCH COUNCIL, THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION AGE (2000)
- Declan McCullagh, *Could Hollywood Hack Your PC?*, CNET News.com (2002), <http://news.com.com/2102-1023-945923.html>
- Peer to Peer Piracy Prevention Act, H.R. 5211, 107<sup>th</sup> Cong., 2d Sess. (2002)

Part IV: Other Considerations and Strategies for Dealing with the P2P Phenomenon

April 11            Assessing the Effects of File-Sharing on Record Sales and of RIAA  
Lawsuits on Extent of File-Sharing

- Felix Oberholzer and Koleman Strumpf, *The Effect of File Sharing on Record Sales: An Empirical Analysis*, Working paper, March 2004, [http://www.unc.edu/~cigar/papers/FileSharing\\_March2004.pdf](http://www.unc.edu/~cigar/papers/FileSharing_March2004.pdf)
- PEW INTERNET & AMERICAN LIFE PROJECT, SHARP DECLINE IN MUSIC FILE SWAPPERS: DATA MEMO FROM PIP AND COMSCORE MEDIA MATRIX (2004), available at [http://www.pewinternet.org/pdfs/PIP\\_File\\_Swapping\\_Memo\\_0104.pdf](http://www.pewinternet.org/pdfs/PIP_File_Swapping_Memo_0104.pdf)

#### April 18 Digital Rights Management Technologies As an Option

- Chapter 5, Protecting Digital Intellectual Property: Means and Measures, NATIONAL RESEARCH COUNCIL, THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION AGE (2000) at pp. 153-73
- Peter Biddle, Paul England, Marcus Peinado, and Bryan Willman, *The Darknet and the Future of Content Distribution*, PROCEEDINGS OF ACM WORKSHOP ON DIGITAL RIGHTS MANAGEMENT (2002), available at <http://crypto.stanford.edu/DRM2002/darknet5.doc>
- John A. Halderman, *Evaluating New Copy-Prevention Techniques for Audio CDs*, PROCEEDINGS OF ACM WORKSHOP ON DIGITAL RIGHTS MANAGEMENT (2002), available at <http://www.cs.princeton.edu/~jhalderm/papers/drm2002.pdf>

#### April 25 Compulsory Licensing As an Option

- Neil Weinstock Netanel, *Impose a Noncommercial Use Levy to Allow Free Peer-to-Peer File Sharing*, 17 Harvard J. Law & Tech. 1 (2003), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=468180](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=468180)
- Robert P. Merges, *Compulsory Licensing vs. the Three "Golden Oldies" Property, Contract Rights and Markets*, CATO Institute Policy Analysis No 508 (Jan. 15, 2004), available at URL: <http://www.cato.org/pubs/pas/pa508.pdf>

#### May 2 New Business Models As an Option

Guest Speaker: Professor Hal Varian, SIMS, UC Berkeley

- Esther Dyson, *Intellectual Value*, 3.07 WIRED 136 (July 1995), available at <http://www.wired.com/wired/archive/3.07/dyson.html>
- Chapter 5, Protecting Digital Intellectual Property: Means and Measures, NATIONAL RESEARCH COUNCIL, THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY RIGHTS IN THE INFORMATION AGE (2000) at 177-185

- Alec Hanley Bemis, *A Small New Future*, LA Weekly, Sept. 24-30 2004, available at <http://www.laweekly.com/ink/04/44/features-bemis.php>

May 9 International Considerations Pertaining to National Efforts to Regulate P2P File-Sharing and File-Sharing Technologies

- Salil Mehra, *Software as Crime: Japan, the United States and Contributory Copyright Infringement*, available at [http://papers.ssrn.com/paper.taf?abstract\\_id=600622](http://papers.ssrn.com/paper.taf?abstract_id=600622)
- Pamela Samuelson, *Intellectual Property Arbitrage: How Foreign Rules Can Affect Domestic Protections*, 71 U Chi L Rev 223 (2004)

Grading:

You will be expected to write a 15-20 page paper about your recommendations as to what should be done (or not done) to address the challenges posed by p2p file sharing and/or file-sharing technologies. This should include a discussion as to who is the appropriate policy actor and the process by which the policy recommendations you make should be undertaken. If you wish to write a paper on a more specific topic or to write a more ambitious and longer paper, I am willing to discuss an additional credit of IS 299 to accomplish this goal. This paper is due on the last day of class, May 9. This paper will constitute 2/3 of the grade for the course.

You are also expected to read required readings and be prepared to discuss them and related issues in class, on the listserv, and/or on the course blog. Please sign up for a date when you wish to take on responsibility for reading and making comments on one or more of the recommended readings for the class. Your active participation in the class and the quality of your contributions will be weighed as 1/3 of the course grade. A link to the class blog is on the course website which can be found at <http://www.sims.berkeley.edu/academics/courses/is296a-2/s05/>. Instructions to join the class listserv are also available there.

Prof. Samuelson's Office Hours:

Tuesdays 3:15-4:00 @ 434 North Addition

Wednesdays 2:30-4 @ 305B South Hall

Or by appointment

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Joe Hall is the class reader who can be reached at [joehall@pobox.com](mailto:joehall@pobox.com)

He will be available to discuss substantive issues, blog, website, and listserv issues